

**Title 50—Wildlife and Fisheries**

**CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR**

**SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, BARTER, PURCHASE, EXPORTATION, AND IMPORTATION OF WILDLIFE**

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

**Final Endangered Status and Critical Habitat for the Giant Anole**

**AGENCY:** U.S. Fish and Wildlife Service.

**ACTION:** Final rulemaking.

**SUMMARY:** The Director, U.S. Fish and Wildlife Service issues a rulemaking pursuant to the Endangered Species Act of 1973 which determines the giant anole (*Anolis roosevelti*) to be an endangered species and determines critical habitat for this species.

**DATES:** This final rulemaking becomes effective on August 22, 1977.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240 (202-343-4646).

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On January 10, 1977, the U.S. Fish and Wildlife Service (hereinafter the Service) published a proposed rulemaking in the Federal Register (42 FR 2101-2102) advising that sufficient evidence was on file to support a determination that the giant anole was an endangered species as provided for by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act). The proposal summarized the factors thought to be contributing to the likelihood that this lizard could become extinct within the foreseeable future; specified the prohibitions which would be applicable if such a determination were made; and solicited comments, suggestions, objections, and factual information from any interested person. Section 4(b)(1)(A) of the Act requires that the Governor of each State, within which a resident species of wildlife is known to occur, be notified and be provided 90 days to comment before any such species is determined to be a threatened species or an endangered species. A letter was sent to Governor Hernandez-Colon of Puerto Rico on January 25, 1977, notifying him of the proposed rulemaking for the giant anole. A similar letter on the same date, was sent to Mr. Pedro Ramos of the Department of Natural Resources of Puerto

Rico. On January 25, 1977, a memorandum was sent to the Service Directorate and affected Regional personnel, and letters were sent to other interested parties.

No official comments were received from the Governor of Puerto Rico. However, comments were received from the Secretary of the Department of Natural Resources.

**SUMMARY OF COMMENTS AND RECOMMENDATIONS**

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the Federal Register prior to adding any species to the list of endangered and threatened wildlife.

In the January 10, 1977, Federal Register proposed rulemaking (42 FR 2101-2102) and the associated January 14, 1977, news release, all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rulemaking.

All public comments received during the period January 10, 1977, to April 7, 1977, were considered.

Letters were received from 7 individuals, including representatives of the American Society of Ichthyologists and Herpetologists, the Department of Natural Resources of Puerto Rico, and the New York Zoological Society.

The only comment to add information to that contained in the proposed rulemaking was that from the Puerto Rico Department of Natural Resources. While supporting the listing of this lizard as endangered, they supplied a more precise outline of critical habitat based on remaining vegetation on Culebra. Accordingly, their recommendations have been incorporated into this final rulemaking.

Letters from the New York Zoological Society and one individual supported the proposed endangered status and critical habitat designation for the giant anole and commented on its extreme rarity. Letters from the American Society of Ichthyologists and Herpetologists and one individual supported the proposed rulemaking on this species but made no additional comments.

Two letters, one from a private individual and the other from the International Union for the Conservation of Nature and Natural Resources, did not comment on the proposed rulemaking but offered the names of additional persons who might have information on this species.

## CONCLUSION

After a thorough review and consideration of all the information available, the Director has determined that the giant anole is in danger of extinction throughout all or a significant portion of its range due to one or more of the factors described in section 4(a) of the Act. This review amplifies and substantiates the description of those factors included in the proposed rulemaking (42 FR 2101-2102). Those factors were described as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The giant anole is a rare lizard which may survive only in the canopy of mountain forest on Mt. Resaca. The fan-leaved palm is the tallest tree in such forest, and, as with the semi-moist forest in general is quickly disappearing because of man's activities. Unless the remaining forest on the slopes of Mt. Resaca is preserved, the specialized habitat of this lizard is threatened with destruction.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable for this species.

(3) *Disease or predation.* Unknown.

(4) *The inadequacy of existing regulatory mechanisms.* There are no existing regulatory measures to protect this species.

(5) *Other natural or manmade factors affecting its continued existence.* None.

## CRITICAL HABITAT

The Director has considered all comments and data submitted in response to the proposed determination of critical habitat for the giant anole (42 FR 2101-2102).

Based on this review, and incorporating the suggestions received by the Puerto Rico Department of Natural Resources, critical habitat for the giant anole, *Anolis roosevelti*, is determined to include the following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species):

(1) An area on Culebra Island as outlined on the map at the end of this final rulemaking (because there are no physical landmarks on which to base a verbal description, reference should be made to this map).

## EFFECT OF THE RULEMAKING

The effects of these determinations and this rulemaking include, but are not necessarily limited to, those discussed below.

Endangered species regulations already published in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. The regulations referred to above, which pertain to endangered species, are found at § 17.21 of Title 50 and, for the convenience of the reader, are reprinted below:

## § 17.21 Prohibitions.

(a) Except as provided in subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or  
(ii) Dispose of a dead specimen; or  
(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c)(2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19123, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take endangered species for conservation programs in accordance with the cooperative agreement, provided that such taking is not reasonably anticipated to result in: (i) the death or permanent disabling of the specimen; (ii) the removal of the specimen from the State where the taking occurred; (iii) the introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or (iv) the holding of the specimen in captivity for a period of more than 45 consecutive days.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

*Example.* A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection.

The determination set forth in this final rulemaking also makes the giant anole eligible for the consideration provided by section 7 of the Act. That section reads as follows:

## INTERAGENCY COOPERATION

SEC. 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

The Director has prepared, in consultation with an ad hoc interagency committee, guidelines for Federal agencies for the application of section 7 of the act. In addition, proposed provisions for interagency cooperation were published on January 26, 1977, in the FEDERAL REGISTER (42 FR 4868-4875) to assist Federal agencies in complying with section 7.

Regulations which appear in Part 17, Title 50 of the Code of Federal Regulations were first published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44412), and provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances.

EFFECT INTERNATIONALLY

In addition to the protection provided by the act, the Service will review the giant anole to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix(ices) to that Convention or whether it should be considered under other, appropriate international agreements.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. It addresses this action as it involves the giant anole. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

This rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (U.S.C. 1531-1543; 87 Stat. 884), and was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (202-343-7314).

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: July 5, 1977.

LYNN A. GREENWALT,  
Director,  
Fish and Wildlife Service.

Accordingly § 17.11 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. By adding the giant anole to the list under "Reptiles" as indicated below:

§ 17.11 Endangered and threatened wildlife.

Species		Population	Range		Status listed	Special rules
Common name	Scientific name		Known distribution	Portion of range where threatened or endangered		
Reptiles: Anole, Giant	<i>Anolis roosevelti</i>	NA	Culebra Island, Puerto Rico	Entire	E	NA

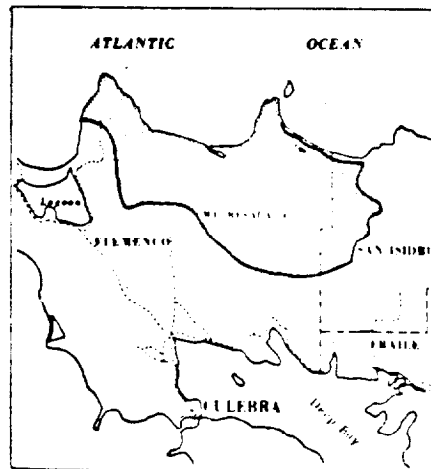
50 CFR Part 17 is further amended to read:

§ 17.95 Critical habitat—fish and wildlife.

(c) Reptiles. \* \* \*

(4) *Giant anole*. (i) The following area (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species) is critical habitat for the giant anole.

(A) An area on Culebra Island as outlined by the shaded area on the following map:



CRITICAL HABITAT FOR THE GIANT ANOLE ON CULEBRA ISLAND

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the critical habitat area.

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